TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #98-30

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Applicability of sales and use tax to medical products and microfilming services.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

(A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
(B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
(C) The applicable law must not have been changed or amended;
(D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
(E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is a for-profit institution located in [CITY A, TENNESSEE]. The Taxpayer purchases various medical supplies that are prescribed for the medical treatment of patients by a licensed practitioner of the healing arts. The medical supplies are subsequently included in an itemized bill to the patient.

1. Perfusion supplies

Perfusion supplies and services are purchased from a vendor on behalf of cardiac surgery patients. During cardiac surgery, a patient's heart must be still. Once the heart is no longer functioning, the pumps and related perfusion supplies immediately assume the responsibilities of both the heart and the lungs. More specifically, the perfusion supplies pump the patient's blood while adding oxygen and removing excess carbon dioxide from the blood. The surgery is performed by the Taxpayer's surgeons with the assistance of perfusionists supplied by the vendor of the perfusion supplies.

A perfusionist is a skilled person who operates extracorporeal circulation equipment (equipment used to circulate the blood and/or body fluids outside of the body) during any medical situation in which it is necessary to support or replace the patient's cardiopulmonary/circulatory function and ensures the proper management of physiologic functions by monitoring the necessary variables.

Following are some of the products used by the perfusionist during surgery:

a. basic membrane tubing pack, table tubing pack, membrane oxygenator, arterial line filter, centrifugal pump/flow probe, and venous oxygen saturation sensor: all absolutely necessary to take the place of the patient's heart and lungs during the surgery.

b. hemoconcentrator: an extra device inserted into the bypass circuit to pull fluids out of the circulation to increase the patient's hematocrit.

c. intraaortic balloon pump (IABP) set: a disposable balloon threaded up the aorta to take the workload off the heart in patients with cardiac failure or failure to come off the cardiopulmonary bypass system. It consists of a balloon attached to a catheter inserted in the aorta that is automatically inflated during diastole and deflated during systole, thereby increasing intraaortic pressure (counterpulsation).

d. double line set: contains extra tubing for the bypass circuit.

e. cardioplegia tubing set: used for myocardial protection during bypass procedures which keep the patient from having a heart attack.

Upon completion of the cardiac surgery, the blood contaminated plastic pumps, tubing, oxygenator and other supplies are disposed of in accordance with OSHA standards for hazardous waste.

2. Dressings

A dressing is a clean or sterile covering applied directly to wounded or diseased tissue for absorption of secretions, protection from trauma (infection), administration of medications, or to stop bleeding. Dressings include absorbent dressings, antiseptic dressings, occlusive dressings, pressure dressings and wet dressings. Pressure dressing are used to maintain constant pressure, as in the control of bleeding. Dressings may contain a drug, antiseptic, antibiotic, moisturizer, or lubricant.

3. Bandages

Bandages are a strip or roll of gauze or other material for wrapping or binding any part of the body. Bandages may be used to stop the flow of blood, to safeguard against contamination, or to hold a dressing in place. Bandages may be elasticized, either to provide flexibility of the bandaged area, or conversely to hold a splint in position or to immobilize an injured part of the body, to prevent further injury, or to facilitate healing. Bandages may be sterile when they come into direct contact with the wound.

4. Foley catheter tray

The tray includes a Foley catheter, lubricant, syringe with sterile water, and other miscellaneous items. The primary usage of the tray is the use of the Foley catheter. Foley catheters are used for the continuous drainage of the bladder.

5. Microfilming service

The Taxpayer outsources the microfilming of hospital records to a vendor. The vendor copies the records onto film then destroys the original hospital records. The film is ultimately sent to the Taxpayer for storage. The vendor invoices the Taxpayer separately for the service and the film.

ISSUES

1. Whether the following perfusionist supplies are subject to sales and use tax:

a. basic membrane tubing pack, table tubing pack, membrane oxygenator, arterial line filter, centrifugal pump/flow probe, and venous oxygen saturation sensor
b. hemoconcentrator
c. IABP set
d. double line set
e. cardioplegia tubing set

2. Whether dressings are subject to sales and use tax.

3. Whether bandages are subject to sales and use tax.

4. Whether Foley catheter trays are subject to sales and use tax.

5. Whether microfilming services are subject to sales tax.

RULINGS

1. The perfusion supplies are subject to sales and use tax as follows:

a. Basic membrane tubing pack, table tubing pack, membrane oxygenator, arterial line filter, and centrifugal pump/flow probe, are exempt from sales and use tax as prosthetic devices. The venous oxygen saturation sensor is subject to sales and use tax.
b. Hemoconcentrator is subject to sales and use tax.
c. IABP set is exempt from sales and use tax.
d. Double line set is exempt from sales and use tax as a prosthetic device.
e. Cardioplegia tubing set is subject to sales and use tax.

2. Dressings are subject to sales and use tax.

3. Bandages are subject to sales and use tax.

4. The Foley catheter is exempt from sales and use tax. The remaining items on the tray are subject to sales and use tax unless they are ostomy products used by a patient who has had a colostomy, ileostomy or urostomy.

5. Microfilming services ,as described, are subject to sales tax.

ANALYSIS

Tenn. Code Ann. § 67-6-314(5) provides an exemption from sales tax of

> the sale of prosthetics, orthotics, special molded orthopedic shoes, walkers, crutches, surgical supports of all kinds, and other similarly medical corrective or support appliances and devices.

A device is a prosthetic if it replaces a missing body part or augments the performance of a natural function. *Cordis Corp. v. Taylor*, 762 S.W.2d 138, 139 (Tenn. 1988). The exemption of orthotics has been applied to devices used to brace, support, or align the skeletal or muscular system. There is no specific exemption, however, for surgical tools or appliances used to perform surgery or invasive medical procedures.

1. Perfusion supplies are subject to tax as follows:

a. The basic membrane tubing pack, table tubing pack, membrane oxygenator, arterial line filter, centrifugal pump/flow probe, and venous oxygen saturation sensor are described above as absolutely necessary to take the place of the patient's heart and lungs during the surgery. Based on this description, it appears these products, with the exception of the venous oxygen saturation sensor, temporarily replace the heart. Accordingly, these products are exempt from sales and use tax as prosthetic devices. The venous oxygen saturation sensor is a sensor, which is not a prosthetic device, but is used as a surgical or medical tool. Accordingly, the sensor is subject to tax.

b. A hemoconcentrator is an extra device inserted into the bypass circuit to pull fluids out of the circulation to increase the patient's hematocrit. The hemoconcentrator is used in the bypass circuit. Based on the description provided, it does not appear that the hemoconcentrator replaces a body part or augments a natural function. Accordingly, it is subject to tax.

c. IABP set is a disposable balloon threaded up the aorta to take the workload off the heart in patients with cardiac failure or failure to come off the cardiopulmonary bypass system. Based on the information given, this constitutes more than a mere surgical tool, as it acts to provide counterpulsation and to assist the heart's function. Accordingly, it is exempt from sales and use tax as a prosthetic device.

d. The double line set contains extra tubing for the bypass circuit. Because it is used in the bypass circuit that temporarily replaces the heart, it is also exempt as a prosthetic device.

e. The cardioplegia tubing set is used for myocardial protection during bypass procedures which keep the patient from having a heart attack. This set does not appear to act as a true prosthetic device as much as it serves as a prophylactic measure to prevent a heart attack. The cardioplegia tubing set is subject to sales and use tax.

2. As described above, dressings are applied directly to wounded or diseased tissue for absorption of secretions, protection from trauma, administration of medications, or to stop bleeding. Although dressings are important in the healing process, dressings do not take the place of a body part so as to serve as prosthetic devices. Dressings are subject to sales and use tax.

3. Bandages can be used for a variety of functions, including to stop the flow of blood, to safeguard against contamination, or to hold a dressing in place. Although bandages can be important and necessary in the healing process, they do not rise to the level of either replacing a body part or constituting a necessary support device. Accordingly, bandages are subject to sales and use tax.

4. Foley catheters provide drainage for patients incapable of excreting waste normally, thereby replacing or augmenting a natural body function. Foley catheters are exempt from tax as a prosthetic device. Tenn. Code Ann. § 67-6-314(5). The remaining items, including tray, lubricant, syringe with sterile water, and other miscellaneous items, are not prosthetic devices and accordingly are subject to tax unless they are otherwise exempt as ostomy products. Tenn. Code Ann. § 67-6-317 exempts the sale of ostomy products or appliances used by patients who have had a colostomy, ileostomy or urostomy.

5. Microfilming services involve the copying of hospital records onto microfilm. The vendor charges the Taxpayer separately for the service rendered and the film used. Copying records on microfilm is not one of the specifically listed services subject to the sales and use tax. Tenn. Code Ann. § 67-6-102(23)(F). However, charges for copying records onto microfilm are nonetheless taxable. There is a "sale" of tangible personal property to the taxpayer of the completed microfilm containing the hospital records. *See,* Tenn. Code Ann. § 67-6-102(24)(A). Even though the vendor may choose to separate the elements of this charge for the tangible personal property, the entire charge is taxable in this case. *See, Thomas Nelson, Inc. v. Olsen*, 723 S.W.2d 621 (Tenn. 1987).

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APPROVED: _____
Ruth E. Johnson
Commissioner

DATE: 7-2-98